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8 UNITED STATES OF AMERICA
9

10 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION
12

13 UNITED STATES OF AMERICA,) SA No. 08-150-AG
14)
Plaintiff,) GOVERNMENT'S SENTENCING
15) POSITION; MOTION FOR DOWNWARD
v.) DEPARTURE PURSUANT TO U.S.S.G.
16) § 5K1.1; EXHIBITS
JEANNE M. ROWZEE,)
17)
Defendant.) Date: May 21, 2012
18) Time: 1:30 p.m.
19)
_____)

20 The government submits its sentencing position re defendant
21 Jeanne M. Rowzee.

22 DATED: May 10, 2012

Respectfully submitted,

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25 _____
GREGORY W. STAPLES
Assistant United States Attorney
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1 **I. INTRODUCTION**

2 The government does object to the findings in the PSR. The
3 government generally agrees with the Guidelines calculations in
4 the PSR, with the exception of the loss amount and application of
5 a 2-level adjustment for defendant being a leader/organizer of
6 the offense. Probation recommends a sentence of 135 months based
7 on a higher loss amount and the role adjustment. The government
8 recommends a sentence of 70 months based on its stipulated loss
9 amount, no role adjustment, and its motion for a 2-level downward
10 departure pursuant to U.S.S.G. § 5K1.1. The government agrees
11 with the other recommendations by Probation.

12 **II. BACKGROUND**

13 Defendant was arrested on a complaint in May 2008 and
14 pleaded guilty to a two-count information charging her with
15 conspiracy and securities fraud in violation of 18 U.S.C. § 371
16 and 15 U.S.C. §§ 78j(b) and 78ff, pursuant to a cooperation plea
17 agreement. In her plea agreement, defendant stipulated to the
18 following factual basis:

19 Since at least 2004, defendant has been involved with James
20 Halstead and Robert Harvey in a scheme to defraud victims by
21 offering phony investments, including investments in Private
22 Investments in Public Entities ("PIPEs"). Defendant,
23 Halstead, and Harvey described PIPEs as short-term bridge
24 loans to companies that were in the process of obtaining
25 equity financing for growth. Defendant, Halstead, and
26 Harvey told victims their money would be used to fund these
27 short-term loans. Victims were promised a rate of return of
28 approximately 25% to 35% over a term of approximately three

1 to four months. Victims were told that investors had never
2 lost money in their investments. Victims also were told
3 that all money would be used to fund the investments.
4 Victims were told that defendant was an experienced
5 securities attorney and personally performed due diligence
6 on the companies receiving the loans to ensure they were
7 safe investments. Defendant knew these statements were
8 false. Instead of investing the money as promised,
9 defendant, Halstead, and Harvey would use victims' money to
10 make phony investment return payments to other victims, and
11 for their own personal use. In so doing, defendant acted
12 with the intent to defraud. In furtherance of the scheme,
13 on September 18, 2006, defendant caused the wiring of a
14 purported profit payment of \$300,000 to victim Thomas P.
15 from her Bank of America Account in California through an
16 account at Bank of New York in New York. As a result of the
17 scheme, more than fifty victims lost more than \$7 million.

18 Indictment ¶ 9.

19 Halstead was sentenced to 120 months imprisonment and
20 ordered to pay more than \$14 million in restitution, jointly and
21 severally with defendant, in United States v. Halstead, SACR 08-
22 237-DOC.¹ Harvey was not charged.

23 **III. ADVISORY GUIDELINE CALCULATIONS**

24 In the plea agreement, the parties stipulated to the

25
26 ¹ When Halstead was indicted, the government filed a notice
27 of related case indicating that the Halstead case was based on
28 the same conduct and transactions as this case, which had the
lower number. United States v. Halstead, SACR 08-237-DOC, docket
no. 5. Government counsel does not know why the Halstead case
was not transferred to this Court.

1 following Guidelines calculations:

2 Base Offense Level: 6 U.S.S.G. § 2B1.1(a)

3 Adjustments:

4 Loss > \$7 million: 20 U.S.S.G. § 2B1.1(b)(1)(K)

5 > 50 victims: 4 U.S.S.G. § 2B1.1(b)(2)(B)

6 Acceptance of
7 Responsibility: -3 U.S.S.G. §3E1.1(b)

8 The plea agreement provides that both parties are free to
9 recommend additional adjustments and enhancements. The
10 government recommends a two-level adjustment for abuse of trust
11 pursuant to U.S.S.G. § 3B1.3. (As discussed below, defendant was
12 a lawyer at the time of the offense, and victims relied upon her
13 status as a lawyer in good standing as an important factor in
14 deciding to invest.) Given defendant's criminal history category
15 of I, the resulting total offense level under the government's
16 recommendation is 29, with a sentence range of 87-108 months.
17 However, as noted below, the government moves for a two-level
18 downward departure based on defendant's cooperation with the
19 government. If granted, the total offense level would be 27,
20 with a sentence range to 70-87 months. Pursuant to the plea
21 agreement the government has agreed to recommend a low-end
22 sentence of 70 months.

23 The Guidelines calculations by Probation are as follows:

24 Base Offense Level: 6 U.S.S.G. § 2B1.1(a)

25 Adjustments:

26 Loss > \$20 million: 20 U.S.S.G. § 2B1.1(b)(1)(L)

27 > 50 victims: 4 U.S.S.G. § 2B1.1(b)(2)(B)

28 Organizer/leader: 2 U.S.S.G. § 3B1.1

Abuse of trust

2 U.S.S.G. § 3B1.3

Acceptance of
Responsibility:

-3 U.S.S.G. §3E1.1(b)

The total offense level is 33, with a sentence level of 135 to 168 months. Probation recommends that defendant be sentenced to a term of 135 months in prison, and pay restitution of \$25,544,811.36, of which she is jointly and severally liable with Halstead for \$14,525,993. The smaller restitution amount for Halstead reflects the fact that defendant received more than \$6 million of victims' money from Harvey. PSR ¶ 17.

The government believes the higher loss figure calculated by Probation is based on more complete information provided by victims following the indictment and entry of the plea in this case. Because the government has stipulated to a lower loss amount in the plea agreement, the government stands by that recommendation because the resulting sentence of 70 months is a reasonable sentence under § 3553.

The government does not believe an adjustment for leader or organizer of the offense if applicable. The government believes that defendant and Halstead were equal players in the offense. Halstead solicited victims, defendant provided the assurance that an experienced attorney with experience with the SEC was conducting due diligence on the companies purportedly receiving bridge loans. Both were involved in the misuse of victims' money. Neither was directing the conduct of the other.

IV. MOTION FOR DOWNWARD DEPARTURE

Immediately upon her arrest in May 2008, defendant indicated that she wanted to cooperate. Defendant proffered and provided

1 information explaining the roles she and Halstead played in the
2 offense. The information she provided was corroborated by victim
3 statements and bank records. The government had a strong case
4 against Halstead prior to defendant's proffer. Nonetheless, the
5 government believes defendant's cooperation factored into
6 Halstead's decision to plead guilty.

7 Defendant has also cooperated with counsel for some victims
8 in a civil suit who was trying to recover assets for his clients.
9 According to counsel, defendant assisted in the recovery of
10 approximately half of the \$3.4 million his clients lost. The
11 government is skeptical as to the value of some of the recovered
12 assets, which appear to be shares of stock in small, closely-held
13 entities. Efforts at making restitution are not typically taken
14 into consideration for a downward departure under U.S.S.G. §
15 5K1.1, which refers to "substantial assistance in the
16 investigation or prosecution of another person who has committed
17 an offense." The background comments note, however, that a court
18 may consider "variable relevant factors" in addition to those
19 listed in the guideline. Defendant's efforts to recover assets
20 merit some consideration and have been factored into the
21 departure recommendation.

22 The government is recommending a 2-level downward departure.
23 As noted, defendant did provide assistance in the prosecution of
24 Halstead, and did try to recover assets, though that effort was
25 too late. A 2-level reduction would result in a 70-month
26 sentence. As set forth below in the discussion of § 3553
27 factors, a 70-month sentence is a fair balance between
28 defendant's cooperation and her use of her law license to steal.

1 **V. SECTION 3553 FACTORS**

2 A sentence of 70 months is no greater than necessary to
3 fulfill the goals of 18 U.S.C. § 3553. As set forth in the PSR
4 at ¶ 21, and in the victim letters attached as Exhibit 1,
5 defendant's fraud has had a devastating impact on her victims.
6 Some victims have lost life savings or face foreclosure on their
7 homes, and are experiencing psychological or emotional problems
8 as a result of their losses. Given her cooperation with the
9 government, a 70-month sentence reflects the seriousness of the
10 offense, promotes respect for the law, and provides adequate
11 deterrence. A 70-month sentence accounts both for defendant's
12 cooperation and her use of her status as a lawyer to lull victims
13 into a false sense of security, which increases the seriousness
14 of the offense. Defendant is 53 years old and has resigned from
15 the Bar with charges pending. She also has more than \$60 million
16 in judgments against her. Given her age, a 70-month sentence at
17 this stage of her life will deprive defendant of a significant
18 portion of the prime years remaining in her life.

19 Finally, a 70-month sentence is consistent with sentences
20 given to other white collar defendants who have caused this
21 amount of loss but have cooperated with the government. In
22 particular, a 70-month sentence is not disparate from the 10-year
23 sentence Halstead received for the same scheme, given her
24 willingness to cooperate.

25 **V. CONCLUSION**

26 For the foregoing reasons, the government recommends a
27 sentence of 70 months, along with the other recommendations by
28 Probation.